DEPARTMENT OF STATE REVENUE

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Letter of Findings: 06-0128
Indiana Gross Retail Tax
For 2003

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I. Automobile Purchase – Gross Retail Tax

Authority: IC 6-2.5-1-1 et seq.; IC 6-2.5-3-2(a); Rhoade v. Ind. Dept. of State Revenue, 774 N.E.2d 1044 (Tax Ct. 2002); 45 IAC 2.2-3-5(b); Fla. Stat. § 212.06(7).

Taxpayers argue that the Department of Revenue erred when it assessed Indiana Gross Retail Tax on the purchase price of an automobile.

STATEMENT OF FACTS

Taxpayers operate an Indiana business and have an Indiana home which they claim as their primary residence. Taxpayers also have a Florida residence.

In December of 2003, taxpayers purchased an automobile from an Indiana dealership. At the time of the purchase, taxpayers did not pay Indiana sales tax. The dealership's invoice stipulates that Indiana sales tax is "N.A."

In January of 2004, taxpayers "titled" the car in Florida. The Florida title history indicates that taxpayers paid Florida "state sales tax."

The Indiana Department of Revenue (Department) conducted an audit review of both taxpayers' business and taxpayers' own individual state income tax returns. The investigative summary for this income tax review states that, "Indiana is the [taxpayers'] state of residence and [taxpayers] should be filing Indiana Income Tax returns." The Department arrived at that conclusion because the taxpayers maintained a permanent Indiana residence; taxpayers claimed a homestead exemption on the ground that the taxpayers' Indiana home was their primary residence; taxpayers worked for and drew a salary – in the form of a distributive share – from their Indiana business.

In an investigative summary prepared two days after the taxpayers' income tax investigation was complete, the Department found that taxpayers were Indiana residents, maintained regular employment in Indiana, and owned a permanent Indiana residence. On the ground that taxpayers had purchased an automobile from an Indiana dealership, the Department concluded that taxpayers should have paid sales tax on the purchase price of the car. As set out in the investigative summary, "Since the taxpayer[s] did not pay sales tax at the time of purchase, consumer use tax is being assessed in this audit."

DISCUSSION

I. Automobile Purchase – Gross Retail Tax

Taxpayers challenge the use tax assessment on the ground that the automobile is now located in Florida, that taxpayers have a home in Florida, and that they paid Florida sales tax when they titled the car in Florida some three weeks after they bought the vehicle.

Indiana imposes a sales tax on retail transactions and a complimentary use tax on tangible personal property that is stored, used, or consumed in the state. IC 6-2.5-1-1 et seq. The use tax "is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC 6-2.5-3-2(a).

45 IAC 2.2-3-5(b) states that, "The sale of any vehicle required to be licensed by the state for highway use in Indiana shall constitute selling at retail and shall be subject to the sales or use tax unless such purchaser is entitled to one or more of the exemptions as provided on form ST-108."

The ST-108 form is entitled "Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle or Watercraft." The instructions on the back of the form "require[] that a person titling a vehicle or watercraft present certification indicating that the state gross sales has been paid...."

At the time of the automobile sale, taxpayers presented a form ST-137 entitled "Certificate of Exemption for an Out-of-State Delivery of Motor Vehicle, Manufactured Home, Aircraft, Watercraft or Trailer to be Registered and/or Titled Outside the State of Indiana." The ST-137 was eliminated in July 2004 in response to the Tax Court's decision in Rhoade v. Ind. Dept. of State Revenue, 774 N.E.2d 1044 (Tax Ct. 2002) which declared the denial of a credit for sales and use tax, paid to another state on the out-of-state purchase of a vehicle later brought into Indiana, was unconstitutional. Id. at 1050.

However, the Tax Court's decision in Rhoade is inapplicable under the circumstances presented by taxpayers. Taxpayers did not purchase the automobile in Florida, transport it to Indiana, and then claim an Indiana credit for the amount of sales tax paid to Florida; the inverse is true. As the court stated, "The plain language of [IC 6-2.5-3-2(a)] indicates the Legislature's intent to impose the use tax on the use of property

purchased in Indiana as well as on property purchased in other states that is then transported back to Indiana. Rhoade at 1049.

Taxpayers purchased the automobile from the Indiana dealer on December 26, 2003, claiming an exemption – by means of the ST-137 – that they intended the vehicle to be delivered to an out-of-state location. By January 20, 2004, the vehicle had been transported to Florida, titled in that state, and – apparently – Florida state sale tax paid at the time the vehicle was titled.

There is nothing to indicate that the December 26 purchase was anything other than a straightforward retail transaction between Indiana residents and an Indiana retail merchant. Sales tax was clearly due at the time of the transaction; the subsequent payment of Florida sales tax did not have a salutary effect on taxpayers' liability incurred at the time they purchased and took possession of the vehicle. There is nothing untoward, illegal, or irregular about the Department's decision to impose a use tax assessment based on the December 26 purchase price. Taxpayers are Indiana residents, maintain their principal residence in this state, and own and operate a business in this state; taxpayers decided to purchase an automobile from an Indiana dealership and presented no evidence whatsoever that the December 26 purchase was exempt from sales tax. The taxpayers' decision – reached some three weeks later – to pay Florida sales tax did not have a "reach-back" effect negating their responsibility to pay sales tax on the December 26 retail transaction.

Taxpayers' remedy lies under Florida law; Fla. Stat. § 212.06(7) provides that Florida must provide a use tax credit for any "like tax" paid to another American jurisdiction that is equal to or greater than Florida's own tax.

Taxpayers' priorities were misplaced; Indiana sales tax was due at the time they purchased the automobile from the Indiana dealer. When taxpayers transported and titled the vehicle in Florida, they should have applied for a credit against any attendant Florida use tax liability.

FINDING

Taxpayers' protest is respectfully denied.

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